

NATURAL RESOURCES COMMISSION Information Bulletin #16 (First Amendment)

Civil Penalty Schedule for Violations of Oil and Gas Production Laws

1. INTRODUCTION

The department of natural resources (the "DNR") is the state agency responsible for the regulation of oil and gas exploration, development, and site reclamation. The statutory authority is set forth at IC 14-37, with rules to help administer the authority codified at 312 IAC 16). One element of enforcement to help assure compliance with these laws is the authority to assess civil penalties through the DNR's division of oil and gas.

The Natural Resources Commission caused the original civil penalty schedule to be published in the Indiana REGISTER as Information Bulletin #16 on September 1, 1997. The First Amendment to Information Bulletin #16 is made effective January 1, 2003.

2. PURPOSE

The purpose of this nonrule policy document is to present a process for the assessment of civil penalties which is consistent and equitable. This penalty policy is designed to deter owners or operators from violating the law. The civil penalties are structured to provide incentives to take precautions against falling into noncompliance before it occurs. One exception is for significant violations, including but not limited to intentional waste fluid dumping or exceeding maximum allowable injection pressure which has the potential for damaging an Underground Source of Drinking Water (USDW). For these and similar significant violations, the division may assess a maximum penalty of up to ten thousand dollars (\$10,000) per day for every day that the violation exists (IC 14-37-13-3).

3. PENALTY DETERMINATION

The civil penalty policy described in this nonrule policy document is intended to account for various factors in the assessment of an appropriate civil penalty for noncompliance with the statutes or rules. The director of the DNR's division of oil and gas shall determine the base civil penalty to be assessed by considering the following criteria:

- A. *History of Violations*: The division director shall consider the operator's history of previous violations during the preceding twelve months. Each violation shall be counted without regard to whether it led to a civil penalty assessment.
- B. *Seriousness*: The division director shall consider the seriousness of a violation, including any actual or potential damage to the environment or hazard to the health and safety of the public;

- C. *Negligence*: The division director shall consider the degree of fault in the occurrence of, or failure to correct, a violation.

4. PENALTY MATRIX

Based on these criteria for a penalty determination, the matrix shall be used by the division to assess base civil penalties. The matrix was designed to remove excessive subjectivity from the penalty assessment phase. The matrix contains the following information:

- A. *Violation Type*: Includes an alphabetical list of all (coded) violations observed by the division of oil and gas.
- B. *Division Response*: This category includes the information on the initial action to be taken by the individual who noted the noncompliance, through the final action by the division for referral to the attorney general's office.
- C. *Base Penalty Amount*: Includes the amount of the penalty to be assessed based upon the number of occurrences and the type of violation.

In the case of continuing violations, the DNR has the authority to immediately assess a penalty, regardless of the noncompliance. In these cases, the penalty can be calculated based on the number of days the violation or noncompliance occurred. The base civil penalty derived from the penalty matrix could then be multiplied by the number of days of violation. A copy of the penalty matrix is attached to, and made a part of, this policy.

Where warranted by the facts of a particular case, the division may omit the penalty stage and escalate directly to permit revocation. Examples include when an owner or operator is bankrupt, deceased, or is not serviceable. The penalty phase may also be bypassed where an operator has three or more outstanding violations and has not contacted the division or made any attempt to correct the noncompliances.

The following factors may be considered in mitigating the penalty, once a violation has been abated:

- A. Actions after the violation.
- B. Ability to pay.
- C. Cost to DNR of the enforcement action.
- D. Economic benefit.
- E. Other unique factors found appropriate by the division.

These factors are discussed in more detail:

1. Actions after the violation

Good faith can be manifested by the violator promptly reporting, and correcting, its noncompliance. Assuming such self-reporting is not required by law, this behavior can result in

mitigation of the penalty. Prompt correction of environmental problems also can constitute good faith. Lack of good faith, on the other hand, can result in the denial of penalty mitigation. Subject to this guidance, the division director may make adjustments up or down, on a case by case basis. The following percentage reductions of the base civil penalty will be considered for operators demonstrating good faith efforts in achieving compliance:

- If the violation is abated immediately or within 25% of the time set for abatement, including extensions of time for abatement, a reduction of 90% of the base penalty will be considered.
- If the violation is abated within 26% to 50% of the time set for abatement, a reduction of 80% of the base penalty will be considered.
- If the violation is abated within 51% to 75% of the time set for abatement, a reduction of 50% of the base penalty will be considered.
- If the violation is abated within 76% to 100% of the time set for abatement, a reduction of 25% of the base penalty will be considered.
- If a violation was self-reported or if an error was made in specific reporting requirements, the director may reduce the penalty by up to 90%.

2. Ability to pay

The burden to demonstrate inability to pay rests on the respondent, as it does with any mitigating circumstances. Thus, a respondent's inability to pay usually will be considered at the settlement stage, and then only if the issue is raised by the respondent. If the respondent fails to provide sufficient information, such as state and federal income tax returns for at least three years, the division will disregard this factor in adjusting the penalty.

When it is determined that a violator cannot afford the penalty prescribed by this policy, or the payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which DNR believes to be more important than the deterrence effect of the penalty, the following options may be considered:

- a delayed payment schedule. Such a schedule may even be contingent upon an increase in sales or some other indicator of improved business.
- an installment payment plan with interest.
- straight penalty reductions as a last recourse.

The amount of any downward adjustment of the penalty is dependent on the individual financial facts of the case.

3. Cost to DNR of Enforcement Action

Pursuant to IC 14-37-13-7, if an order is issued under this article (or as a result of any administrative proceeding under this article), the court or the division director may assess against any party to the proceeding the costs and expenses, including attorney's fees, reasonably incurred by that person with respect to the proceeding, including any judicial review of a final agency action. The division director shall determine the amount of these costs and expenses.

4. Economic Benefit

An economic benefit component should be considered when a violation results in significant economic benefit to the violator. Whenever possible, the economic benefit of noncompliance must be examined; however, for many regulatory requirements, the economic benefit of noncompliance will be difficult to quantify.

Enforcement personnel should consider the following types of economic benefit from noncompliance in determining the economic benefit component:

- Benefit from delayed costs
- Benefit from avoided costs
- Other benefits (e.g., profits for period of startup prior to obtaining a permit)

5. Other unique factors

This policy allows an adjustment for unanticipated factors which may arise on a case by case basis. Enforcement personnel have the discretion to make adjustments to the civil penalty for such reasons.

Possible circumstances that may necessitate a downward adjustment in the base civil penalty include:

- It is highly unlikely that the DNR will be able to recover the full civil penalty in litigation
- Defects in evidence, loss of witness, revision of rules, or other complication
- Factors which may make negotiation desirable or reasonable.

5. MINIMUM PENALTY

The minimum penalty, regardless of calculations, will not be less than fifty dollars (\$50).

6. WAIVER OF CIVIL PENALTIES

The division director upon his own initiative or upon written request, may waive the civil penalty in whole or in part if he or she determines that the penalty would be demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.

7. ADMINISTRATIVE REVIEW OF CIVIL PENALTY ASSESSMENT

The owner or operator assessed a civil penalty may contest the proposed penalty by requesting administrative review within thirty days of receipt of the Notice of Penalty Assessment. A petition for review in writing must be sent which states facts demonstrating that:

- A. The petitioner is a person to whom the order is specifically directed;
- B. The petitioner is aggrieved or adversely affected by the order; or
- C. The petitioner is entitled to review under any law.

The request for administrative review shall be delivered to:

Natural Resources Commission
Division of Hearings
Indiana Government Center South
402 W. Washington St., Room W272
Indianapolis, IN 46204

Typically, the first stage of a proceeding after filing a request for administrative review is to set the proceeding for a prehearing conference. If the respondent believes that it is not liable or that the circumstances of its case justify mitigation of the proposed penalty, these issues can be discussed before or during the prehearing conference. In many cases, the fact of a violation will be less of an issue than the amount of the penalty assessed. The burden always is on the violator to justify any mitigation of the assessed penalty.

8. FINAL ASSESSMENT AND PAYMENT

If an operator fails to request a hearing as provided in IC 4-21.5-3-7, the proposed assessment becomes a final order of the director; the penalty assessed becomes immediately due and payable upon expiration of the time allowed to request a hearing. The division director retains the discretion, however, to enter into a settlement agreement with an operator which fails to request review of a civil penalty.

Penalty Matrix
Division of Oil and Gas

Violation	Division Response					Number of Occurrences (Previous Year)		
	1 st Action	2 nd Action	3 rd Action	4 th Action	5 th Action	Occurrences 1-3	Occurrences 4-6	Occurrences >6
ANN1	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$2,000	\$4,000	\$8,000
AWF1	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			1/3 Assess. Amt	2/3 Assess. Amt	Assess. Amt.
BC1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$500	\$1,000	\$2,000
DP1*	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$500	\$1,000	\$2,500
DP1**	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$250	\$500	\$1,000
DP1***	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$500	\$1,000	\$2,500
FH1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH2	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	100	\$200	\$400
FH3	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH4	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH5	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH6	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH7	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FH8	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
FRL1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
IC1	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$250	\$500	\$1,000
IC2	NOV w/ Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$250	\$500	\$1,000
IC3	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$250	\$500	\$1,000
IC4	NOV w/ Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$250	\$500	\$1,000
ID1	WONC	Penalty	Sec. 8 Complaint	Attorney General		\$50	\$100	\$200
IP1	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$1,000	\$2,000	\$4,000
IP2	NOV w/ Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$1,000	\$2,000	\$4,000
IP3	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$1,000	\$2,000	\$4,000
IP4	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$1,000	\$2,000	\$4,000
IP5	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$1,000	\$2,000	\$4,000
MIF1	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$2,500	\$5,000	\$10,000
MIF2	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$2,500	\$5,000	\$10,000
MIT1	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000

Violation	Division Response					Number of Occurrences (Previous Year)		
	1 st Action	2 nd Action	3 rd Action	4 th Action	5 th Action	Occurrences 1-3	Occurrences 4-6	Occurrences >6
OPM1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
PP1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$100	\$200	\$400
QMR1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200
RP1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$100	\$200	\$400
SPC1	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000
SPR1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$100	\$200	\$500
SR1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$100	\$200	\$400
TB1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$100	\$200	\$400
UNI1	NOV W/Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000
UNI2	NOV W/Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000
UNI2(SR)	NOV W/Penalty	Sec. 8 Complaint	Attorney General			\$100	\$250	\$500
UNI3	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General		\$2,500	\$5,000	\$10,000
UNI4	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000
WFD1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$1,000	\$2,000	\$4,000
WFD2	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$2,000	\$4,000	\$8,000
WFD3	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$2,500	\$5,000	\$10,000
WFD4	WONC	NOV w/o Penalty				\$1,000	\$2,000	\$4,000
WFD5	WONC	NOV w/o Penalty				\$1,000	\$2,000	\$4,000
WFD6	WONC	NOV w/o Penalty				\$1,000	\$2,000	\$4,000
WIP1	NOV w/ Penalty	Sec. 8 Complaint	Attorney General			\$1,000	\$2,000	\$4,000
WNP1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WNP2	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WNP3	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WNP4	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WNP5	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WNP6	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$250	\$500	\$1,000
WOP1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$500	\$1,000	\$2,000
WR1	WONC	NOV w/o Penalty	Penalty	Sec. 8 Complaint	Attorney General	\$50	\$100	\$200

Legend:

ANN	Improper Annulus
AWF	Annual Well Fee
BC	Bond Cancellation
DP	Drilling Permit
FH	Fire Hazards
FRL	File Review Letter
IC	Improper Casing
ID	Lease and Well Identification
IP	Improper Pit
MIF	Mechanical Integrity Failure
MIT	Mechanical Integrity Test
OPM	Operation and Maintenance
PP	Pit Permit (Authorization)
QMR	Quarterly Monitoring Report
RP	Rotary Pit
SPC	Spill Containment/ Cleanup
SPR	Spill Reporting
SR	Site Restoration
TB	Transfer and Bond
UNI	Unauthorized Injection
WFD	Waste Fluid Disposal
WIP	Well Improperly Plugged
WOP	Well Operation
WNP	Well Not Plugged
WONC	Warning of Non-Compliance
WR	Well Record
NOV	Notice of Violation
NOV W/O	Notice of Violation (Without Penalty)

Number of Occurrences means the number during the previous 12-month period except for AWF.

Number of Occurrences for AWF means the number for the operator.

DP1* Response for drilling without a permit.

DP1** Response for changing status of well without permit; Class II to oil well.

DP1*** Response for changing status of well without permit; oil well to Class II.